

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RULE TITLE:

RULE NO:

Publications, Rules and Interagency Agreements Incorporated

By Reference

40E-4.091

PURPOSE AND EFFECT: To incorporate language which clarifies that the Uniform Mitigation Assessment Method (UMAM) found in Rule 62-345, F.A.C., is applicable to all applications received on or after February 2, 2004.

SUMMARY: Sections 4.3. 4.3.2 - 4.3.2.4 regarding Mitigation Ratio Guidelines are superseded by Rule 62-345, F.A.C. for all applications received on or after February 2, 2004.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171, 373.413, F.S.

LAW IMPLEMENTED: 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, F.S.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., October 12, 2006

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, Florida 33406

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the South Florida Water Management District Clerk's Office, at (561) 682-6436 at least two business days in advance to make appropriate arrangements.

THE PERSON TO CONTACT REGARDING THE PROPOSED RULE IS: Anita Bain, Division Director, Natural Resource Management Division, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045, extension 6866 or (561) 682-6866 (internet: abain@sfwmd.gov, or for procedural issues, Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, 1-800-432-2045, extension 6299, or (561) 682-6299, email: jsluth@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – _____2-12-06".

(b) through (k) No Change.

(2) No Change.

Specific Authority 373.044, 373.113, 373.171, 373.413, FS. Law Implemented 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, FS. History–New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4 -6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, _____.

(The following represents proposed changes to the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District - 2-12-06" incorporated by reference in Rule 40E-4.091, F.A.C.)

4.3.2 Mitigation Ratio Guidelines

a. For applications received on or after February 2, 2004, except as provided in Rule 62-345, F.A.C., Sections 4.3.2 - 4.3.2.4 are superseded by Rule 62-345, F.A.C.

b. Subsections 4.3.2 - 4.3.2.4 establish ratios for the acreage of mitigation required compared to the acreage which is adversely impacted by regulated activities. Ranges of ratios are provided below for certain specific types of mitigation, including creation, restoration, enhancement and preservation. Mitigation ratios for wetlands which have a 50% or greater coverage of melaleuca (*Melaleuca quinquenervia*), will be determined pursuant to subsection 4.3.2.4. and other provisions of this section. The difference between the ranges of ratios provided for mitigation types is based on the degree of

improvement in ecological value expected from each type. Creation and restoration are assigned the lowest range of ratios as these activities, when successfully conducted, add new wetlands or other surface waters which provide the same or similar functions as the area being adversely impacted. The range of ratios established for enhancement is higher than that for creation and restoration, as the area being enhanced currently provides a degree of the desired functions, and this type of mitigation serves to increase, rather than create, those functions. Preservation differs from the other types of mitigation in that it does not serve to improve the existing ecological value of an area in the short term. However, preservation does provide benefits as it can ensure that the values of the preserved area are protected and maintained in the long term, particularly when these values are not fully protected under existing regulatory programs. Therefore, the range of ratios established for preservation is higher than those for other types of mitigation. These ratios are provided as guidelines for preliminary planning purposes only. The actual ratio needed to offset adverse impacts may be higher or lower based on a consideration of the factors listed in subsections 4.3.2.1 through 4.3.2.4. For example, in instances where the proposed system results in only a small loss of ecological value in the impacted area, such as cases involving impacts to areas of low ecological value or cases where the proposed system results in a small reduction of ecological value of the impacted area, then the actual mitigation ratio would normally be in the lower end of or below the range. For other types of mitigation, ratios will be determined based upon the reduction in quality and relative value of the functions of the areas adversely impacted as compared to the expected improvement in quality and value of the functions of the mitigation area.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita Bain, Division Director,
Natural Resource Management Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:
South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 9, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June
16, 2006